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5
6 IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8
9 Plaintiff,

10 vs.

11 KENNETH RICHARD ROWELL,

12 Defendant.

NO: CR-13-6070-WFN

GOVERNMENT'S RESPONSE TO
DEFENDANT'S SENTENCING
MEMORANDUM

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14 Plaintiff, United States of America, by and through Michael C. Ormsby, United
15 States Attorney for the Eastern District of Washington, and Alexander C. Ekstrom,
16 Assistant United States Attorney for the Eastern District of Washington, hereby
17 submits the following response to the Defendant's sentencing memorandum (ECF No.
49) as follows:

18 I. DEFENDANT'S OBJECTIONS

19 1. Page 2, Social Security Number:

20
21 The Defendant denies using "false or fictitious" social security numbers. (ECF
22 No. 49, pg. 2). The Government believes that United States Probation has received
23 these alternate social security numbers from court records and thus that they should be
24 included as an alternative means of identification in a public record. Further, their
25 inclusion does not necessarily connote malicious use by the Defendant.
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1 2. Page 2, Aliases/A.K.A.:

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3 The Defendant denies using “any aliases or A.K.A.s.” (ECF No. 49, pg. 2-3).
4 As above, the Government believes that United States Probation has received these
5 alternate identifiers from court records and thus that they should be included as an
6 alternative means of identification in a public record. Again, their inclusion does not
7 necessarily connote malicious use by the Defendant.

8 3. Page 22, Paragraph 54-57, Conviction for First Degree Sodomy:

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10 The Defendant does not contend that he did not have an attorney for this charge,
11 but rather alleges a failure of his attorney to communicate with him. While the
12 Defendant cites to *Allen*, therein the Court discusses the “presumption of regularity”
13 of a conviction used to enhance a sentence, and the Defendant’s burden to make
14 present evidence by a preponderance of evidence of the conviction’s invalidity in this
15 context. *United States v. Allen*, 153 F.3d 1037, 1041 (9th Cir. 1998). Even if the
16 conviction was assigned criminal history points, and even if the Defendant supported
17 his assertion with an affidavit, the Government would submit that he would not be
18 able to overcome this bar. There is no reason to remove this crime from the PSIR.

19 II. GOVERNMENT’S SENTENCING RECOMMENDATION

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21 Consistent with the plea agreement, the Government requests the Court impose
22 a sentence of 120 months.

23 Respectfully submitted this 29th day of April, 2014

24 MICHAEL C. ORMSBY
25 United States Attorney

26 s/Alexander C. Ekstrom
27 ALEXANDER C. EKSTROM
28 Assistant United States Attorney

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10 I hereby certify that on April 29, 2014, I electronically filed the foregoing with
11 the Clerk of the Court using the CM/ECF System which will send notification of such
12 filing to the following: Rick Lee Hoffman.
13

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15 Alexander C. Ekstrom
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